

Request for the Credentialing Determination for Behavior Analysts

Submitted to:
407 Credentialing and Review Application for Behavior Analysts

August 2021

Submitted on behalf of the Nebraska Association for Behavior Analysis Public Policy
Committee

Introduction: Applied Behavior Analysis Profession

Behavior analysis is a natural science whose subject matter is individual behavior interacting with environmental events. Like other scientific disciplines, behavior analysis has theoretical, experimental, and applied branches, journals, scholarly and professional organizations, university training programs, and professional credentials. The applied branch of the discipline (applied behavior analysis; ABA) involves using scientific principles and procedures discovered through basic and applied research to improve socially significant behavior to a meaningful degree. Thousands of studies published in peer-reviewed scientific journals have demonstrated the efficacy of many ABA procedures – singly and in various combinations -- for building skills and reducing problem behaviors in many clinical and non-clinical populations in a wide range of settings. Almost as soon as that evidence began to accrue in the 1960s, there was great interest in using it in a variety of human service settings, and the practice of behavior analysis was born. It has grown exponentially in recent years with increased demand for ABA services from consumers, employers, and funding sources.

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Description of the Applicant Group and its Proposal

1. Provide the following information for the applicant group(s):

Name, Address, Telephone Number, E-mail Address and Website of the Applicant Group in Nebraska and any National Parent Organization

- Name: Nebraska Association for Behavior Analysis Public Policy Group
- Address: 15911 Newport Ave. Omaha, NE 68116
- Email Address: nebraskaaba@gmail.com
- Website: www.nebraskaaba.com

- Name: Association for Professional Behavior Analysts (APBA)
- Address: 3435 Camino del Rio South, Suite 103 San Diego, CA 92108
- Email Address: info@apbahome.net
- Website: www.apbahome.net

- Name: Association for Behavior Analysis International (ABAI)
- Address: 550 West Centre Ave Portage, MI 49024
- Telephone Number: (269) 492-9310
- Website: <https://www.abainternational.org/welcome.aspx>

Composition of the Group and Approximate Number of Members in Nebraska; and Relationship of the Group to the Occupation Dealt with in the Application

Listed below are the entirety of the members of the NEABA Public Policy Group

- Steve Taylor: Ph.D. BCBA-D. Director of Specialized Services. Apex Children's Center
- William Higgins: Ph.D., LMHP, BCBA-D. Assistant Professor, Psychology Department UNMC
- Mark Shriver: Ph.D. BCBA-D. Professor of Psychology UNMC. Director of MS in ABA Program. Associate Director of Education and Training, Psychology Director, University Center for Excellence in Developmental Disabilities
- Desiree Dawson: M.A., BCBA. Behavior Analysis Specialist II. Doctoral Student, UNMC
- Karen Fry: M.A., BCBA. Mosaic National Office

- Nancy Lamb: M.S., BCBA. BCBA Clinical Supervisor. Division of Developmental Disabilities, Department of Health and Human Services, State of Nebraska
- Angie Barber: Ph.D., LIMHP, BCBA Clinical Supervisor.
- Terri Newton: M.S., Ed., BCBA, Childhood Autism Services Inc. Founder/Executive Director

2. Identify by title, address, telephone number, e-mail address, and website of any other groups, associations, or organizations in Nebraska whose membership consists of any of the following:

Members of the Same Occupation or Profession as that of the Applicant Group

Behavior Analyst Certification Board (BACB)

7950 Shaffer Parkway,
Littleton, CO 80127, USA
www.bacb.com

Members of the Same Occupation or Profession as that of the Applicant Group

Association for Professional Behavior Analysts (APBA)

3435 Camino del Rio South, Suite 103
San Diego, CA, 92108, USA
www.apbahome.net

Members of the Same Occupation or Profession as that of the Applicant Group

Association for Behavior Analysis International (ABAI)

550 West Centre Ave
Portage, MI 49024, USA
<https://www.abainternational.org/welcome.aspx>

Members of the Occupation Dealt with in the Application

Nebraska Association for Behavior Analysis

15911 Newport Ave. Omaha, NE 68116
(402) 885-4907
nebraskaaba@gmail.com
www.nebraskaaba.com

NEABA has approximately 107 members

Employers of the Occupation Dealt with in the Application

- State of Nebraska
- University of Nebraska Medical Center
- Mosaic
- Private Agencies and Individuals in Private Practice
- School Districts:
 - Special Education Advisory Board
 - Omaha Public Schools
 - Westside District 66
 - Bellevue Public Schools
 - Papillion Public Schools
 - Ralston Public Schools
 - Madonna Schools

Practitioners of the Occupations Similar to or Working Closely with Members of the Occupation Dealt with in the Application

- Speech and Language Pathologists
- Psychologists
- Teachers
- Special Education Professionals
- Occupational Therapists
- Clinical Counselors
- Dieticians
- Psychiatrists
- Pediatricians
- Family Physicians
- Athletic Trainers
- Coaches
- Social Workers

Educators or Trainers of Prospective Members of the Occupation Dealt with in the Application

- **University of Nebraska – Lincoln**
Primary Contact: Johanna Higgins, Ph.D., BCBA
- **University of Nebraska – Omaha - Bachelors**
Primary Contact: Sara Kupzyk, Ph.D. BCBA-D, LP
- **University of Nebraska Omaha and University of Nebraska Medical Center - Masters**
Primary Contact: Mark Shriver, PH.D., BCBA-D, LP
- **University of Nebraska Medical Center - Doctoral**
Primary Contact: Nicole Rodriguez, Ph.D., BCBA-D
- **Midland University – Bachelors**
Primary Contact: Connie Taylor, Ph.D., BCBA-D
- **Nebraska Autism Network**
Primary Contact: Annette Wragge, M.Ed., BCBA,
- **Online ABA Programs:**
 - St. Cloud State
 - Florida Institute of Technology
 - Kaplan University

Citizens Familiar with or Utilizing the Services of the Occupation Dealt with in the Application (e.g., Advisory Groups, Patient Rights Groups, Volunteer Agencies for Particular Disease or Conditions etc.)

- **Autism Society of Nebraska**
9012 Q St, Omaha, NE 68127
www.autismnebraska.org
- **Autism Action Partnership**
10110 Nicholas St #202, Omaha, NE 68114
www.autismaction.org
- **Autism Center of Nebraska**
9012 Q St, Omaha, NE 68127
www.autismcenterofnebraska.org
- **Autism Connections of Nebraska**
6127 Havelock Ave, Lincoln, NE 68507
www.autismcenterofnebraska.org
- **Nebraska Autism Spectrum Disorders Network**
Address: 301 Barkley Center, Lincoln, NE 68583
www.unl.edu/asdnetwork
- **Autism Family Network**
6500 Holdrege St, Lincoln, NE 68505
www.autismfamilynetwork.org
- **Nebraska Council on Developmental Disabilities**
301 Centennial Mall South, Lincoln, NE 68509
www.dhhs.ne.gov/pages/DD-Planning-Council
- **ARC of Nebraska**
215 Centennial Mall S # 508, Lincoln, NE 68508
www.arc-nebraska.org
- **Amy K Bonn LLC**
2805 Leigh Lane, Papillion, NE 68133
www.amybonnlaw.com
- **Nebraska Down Syndrome Alliance of the Midlands**
210824 Old Mill Road Suite STE 8 Omaha, NE 68154
<https://www.dsamidlands.org/>
- **Disability Rights Nebraska**
134 S 13th St. #600, Lincoln, NE 68508

- <https://www.disabilityrightsnebraska.org/>
- **Nebraska Statewide Independent Living Council**
215 Centennial Mall South Suite 519 Lincoln, NE 68508
<https://www.nesilc.org/>
- **Children’s Respite Care Center (CRCC)**
2010 N 88th St. Omaha, NE 68134
<https://crccomaha.org/>
- **QLI**
6404 N 70th Plaza Omaha, NE 68104
<https://qliomaha.com/>
- **The Nebraska Aging and Disability Resource Center**
<https://dhhs.ne.gov/Pages/Aging-and-Disability-Resource-Center.aspx>;
- **Nebraska Brain Injury Advisory Counsel**
<https://braininjury.nebraska.gov/>
- **American Association on Intellectual and Developmental Disabilities**
8403 Colesville Road, Suite 900 Silver Spring, MD, 20901
www.aaid.org
- **Mosaic**
4980 S. 118th St. Omaha, NE 68137
www.mosaicinfo.org
- **State of Nebraska, DHHS Developmental Disabilities Division**
301 Centennial Mall South Lincoln, NE 68509
<https://dhhs.ne.gov/pages/developmental-disabilities.aspx>
- **Duet**
9814 M St. Omaha, NE 68127 (Corporate Office)
<https://www.duetne.org/>

Any other Group that would have an interest in the Application

3. If the profession is currently credentialed in Nebraska, provide the current scope of practice of this occupation as set forth in the state statutes. If a change in this scope of practice is being requested, identify that change. This description of the desired scope of practice constitutes the proposal. The application comprises the documentation and other materials that are provided in support of the proposal.

Applicable

Currently, ABA is defined in DHHS regulations

(<https://dhhs.ne.gov/Behavioral%20Health%20Service%20Definitions/Applied%20Behavior%20Analysis.pdf>).

Regulations are also noted pertaining to functional behavior assessments.

(<https://dhhs.ne.gov/Behavioral%20Health%20Service%20Definitions/Functional%20Behavioral%20Assessment.pdf#search=FBA>)

4. If the profession is not currently credentialed in Nebraska, describe the proposed credential and the proposed scope of practice, and / or the proposed functions and procedures of the group to be reviewed. This description of the desired scope of practice and the proposed credential constitute the core of the proposal. Also, please describe how the proposal would be administered. The application comprises the documentation and other materials that are provided in support of the proposal.

Proposed Credential

This application seeks to establish licensure for behavior analysts in the state of Nebraska.

Scope of Practice

PRACTICE OF APPLIED BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders, psychological testing, cognitive therapy, psychoanalysis, and counseling.

Administered

The applicant seeks to establish a licensing board to administer the licensure program and oversee the practice of behavior analysis. The board will be established based on the guidelines in the Limited Liability Company (LLC).

The costs of administering the program will be covered by licensing and re-licensing fees.

- In Nebraska, some administrative costs to the DHHS Licensing Department is anticipated. Those costs will be covered by fees paid by the applicants and licenses, with no net cost to the state anticipated. It is anticipated that the operation of the proposed licensing program will be revenue neutral.

Proposed exemptions from licensure are as follows:

- Individuals licensed to practice psychology in Nebraska and those who deliver psychological services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the Nebraska psychology licensure law; (b) the applied behavior analysis services provided are within the boundaries of the Licensed Psychologist's education, training, and competence; and (c) the Licensed Psychologist

does not represent that s/he is a Licensed Behavior Analyst unless also licensed under this Act.

- Individuals licensed to practice other professions in Nebraska and those who deliver services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the profession's licensure law; (b) the applied behavior analysis services provided are within the boundaries of the licensed professional's education, training, and competence; and (c) the licensed professional does not represent that he or she is a Licensed Behavior Analyst unless also licensed under this Act.
- Behavior technicians who deliver applied behavior analysis services under the extended authority and direction of a Licensed Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts, and must use titles that indicate their nonprofessional status, such as "ABA technician," "behavior technician," or "tutor."
- Caregivers of recipients of applied behavior analysis services who deliver those services to the recipients under the extended authority and direction of a Licensed Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts.
- Behavior analysts who practice with nonhumans, including applied animal behaviorists and animal trainers. Such individuals may use the title "behavior analyst" but may not represent themselves as Licensed Behavior unless licensed under this Act.
- Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such professionals may use the title "behavior analyst" but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act
- Matriculated college or university students or postdoctoral fellows whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or fellowship and are directly supervised by a Licensed Behavior Analyst in this jurisdiction or a qualified faculty member. Such individuals must not represent themselves as professional behavior analysts and must use titles that clearly indicate their trainee status, such as "student," "intern," or "trainee."
- Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity

- Individuals who teach behavior analysis or conduct behavior-analytic research, provided that such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- Individuals employed by a school district performing the duties of their positions. Such individuals shall not represent themselves as Licensed Behavior Analysts unless licensed under this Act, and shall not offer applied behavior analysis services to any persons or entities other than their school employer or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their school employer.
- A 2-month grace period will be provided for individuals to submit an application for licensure after meeting the necessary qualifications. During this grace period, applicants must be under the ongoing supervision of a licensed behavior analyst.

5. Describe in detail the functions typically performed by practitioners of this occupation and identify what if any specific statutory limitations have been placed on these functions. If possible, explain why the Legislature created these restrictions

In almost any setting or with any clientele, the services provided by a professional behavior analyst typically begin with a behavioral assessment. The goal of the assessment is to identify behaviors that may be targeted for intervention and the strengths, needs, preferences, and circumstances of the client and their caregivers. The assessment typically begins with a review of relevant background information and previous evaluations, interviews with the client and caregivers, and collection of direct observational data on one or more dimensions of potential target behavior(s). A particular type of assessment -- a functional analysis -- may be conducted to identify environmental events that influence potential target behaviors (in behavior analytic terms, the functions of the behaviors).

Behavior analysts promote functionally safe, socially valued behaviors and emphasize the use of positive reinforcement, shaping, fading for both reducing behaviors that occur in excess, and increasing appropriate behaviors that occur at a deficit.

Once the initial assessment has been completed, the behavior analyst develops a treatment plan in collaboration with the client, their caregivers, and other professionals as appropriate. The treatment plan specifies goals, objectives, and procedures (protocols) for improving the target behaviors and measuring client progress on each. The behavior analyst is responsible for training assistant behavior analysts, behavior technicians, and caregivers to implement certain components of the treatment plan with the client, reviewing graphed behavioral data on each target behavior frequently in order to monitor progress and modify intervention procedures as needed, and overseeing implementation of the treatment plans.

Currently there are no statutory limitations placed on the performance of these functions by BACB-certified behavior analysts or others purporting to be qualified to practice behavior analysis. Licensure of professional behavior analysts and assistant behavior analysts is needed to protect Nebraska constituents from individuals who do not have the training the profession has determined to be required to practice behavior analysis safely and effectively, and individuals who engage in incompetent or unethical conduct.

6. Identify other occupations that perform some of the same functions or similar functions.

The practice of some behavior analysts may overlap slightly with that of some of the professions listed below; however, the concepts, principles, and procedures of behavior analysis are distinct. See question 7 for further information.

- Clinical Psychologists
- Licensed Independent Mental Health Professionals
- Speech-Language Pathologists
- Occupational Therapists
- School Psychologists
- Social Workers
- Advanced Practice Registered Nurse
- Teachers
- Special Education Professionals
- Clinical Counselors
- Dietitians
- Psychiatrists
- Family Physicians
- Athletic Trainers
- Coaches

7. What functions are unique to this occupation? What distinguishes this occupation from those identified in question 6?

As noted in the introduction, behavior analysis is a natural science whose subject matter is individual behavior interacting with environmental events. The discipline has theoretical, experimental, and applied branches, journals, scholarly and professional organizations, university training programs, and professional credentials that distinguish it from the social sciences. Thousands of experimental and applied studies have identified the principles (natural laws) of behavior analysis – predictable ways in which behavior is influenced by environmental events and changes over time. That information has been used to develop a large array of procedures for analyzing and changing behavior to enable individuals to behave more effectively and successfully.

The applied branch of the discipline – applied behavior analysis (ABA) – is the use of the principles and methods of the science to bring about meaningful changes in socially important behaviors. The characteristics of ABA interventions, which have been defined since 1968, distinguish the practice of ABA from that of other professions. An ABA intervention is

- **Applied** – addresses behaviors that are important to the client and his/her significant others.
- **Behavioral** – focuses on the client behavior(s) in need of improvement and direct measurement of those behaviors (as opposed to measuring the behavior of others who interact with the client, measuring client behavior indirectly by asking others about it, etc.).
- **Analytical** – consistently produces change in a measured aspect of the target behavior(s) when the intervention is in place vs. when it is not.
- **Technological** – described with sufficient detail and clarity that a reader has a reasonable chance of replicating the intervention.
- **Conceptually systematic** – grounded in the conceptualization that behavior is a function of environmental events and described in terms of behavior analytic principles.
- **Effective** – improves target behaviors to a practical degree.
- **Generalized** - produces changes in target behaviors that last over time, occur in situations other than those in which the interventions were implemented initially, and/or spread to behaviors that were not treated directly.

Generally speaking, in everyday practice the design and delivery of ABA services to clients has these distinct components:

- Development of an individualized intervention plan by a professional behavior analyst. That entails reviewing records, interviewing the client and his/her caregivers, and conducting assessments to determine the client's current (baseline) levels of adaptive and maladaptive behaviors, preferences, strengths, and needs; working with the client, caregivers, and other members of the intervention team to select behaviors to be improved ("target behaviors" or "intervention targets"); and developing written procedures (protocols) for directly observing, measuring, and

improving all target behaviors. Intervention may be comprehensive (addressing many target behaviors) or focused on a small number of behaviors.

- Implementation and management of the intervention plan by the professional behavior analyst. That includes
 - Training interventionists (behavior technicians, caregivers, and others) to carry out selected aspects of protocols with the client in everyday settings. The behavior analyst may implement protocols as well.
 - Ongoing supervision and monitoring of interventionists.
 - Ongoing, frequent direct observation and measurement of target behaviors and review and analysis of graphed data.
 - Adjusting protocols and targets based on the data, and training interventionists to implement the revised protocols
 - Periodically reviewing progress with the client, caregivers, intervention team, and funders (where applicable).

The knowledge, skills, and abilities required to practice ABA professionally have been identified through multiple job analysis studies conducted by the Behavior Analyst Certification Board (BACB) over the past 20+ years. Those studies have involved soliciting the input of hundreds of subject matter experts and conducting extensive surveys of thousands of professional behavior analysts. The resulting task list determines the content of the professional examinations in behavior analysis that are required to obtain BACB certifications. Virtually all professions conduct job analysis studies every few years to update the content of their licensure or certification exams. The current task lists for practitioners of behavior analysis (available at <https://www.bacb.com/task-lists/>) have little or no overlap with the task lists of other professions, including those listed in the answer to question 6. In a similar vein, the coursework and supervised experiential training required for certification in the practice of behavior analysis (<https://www.bacb.com>) are distinct from those of other professions, as are the ethical standards (<https://www.bacb.com/ethics-information/ethics-codes/>). The fact that this profession is distinct from others is recognized by (a) the American Medical Association's National Uniform Claim Committee, which has issued Healthcare Provider Taxonomy Codes for Behavior Analyst, Assistant Behavior Analyst, and Behavior Technician separate from the codes for any other professions (see <https://npidb.org/taxonomy>); and (b) the governments of the 33 states that have adopted laws to license behavior analysts in their own right.

8. Identify other occupations whose members regularly supervise members of this occupation, as well as other occupations whose members are regularly supervised by this occupation. Describe the nature of the supervision that occurs in each of these practice situations.

In all 33 states that have adopted behavior analyst licensure laws to date, behavior analysts with master's or doctoral degrees are licensed to practice independently, without supervision from members of other occupations. The BACB credentials Board Certified Behavior Analysts (BCBAs) and Board Certified Behavior Analysts - Doctoral (BCBA-Ds) to practice independently (<https://www.bacb.com/bcba/>). Those certifications are recognized in numerous laws and regulations around the country (e.g., health insurance laws, Medicaid policies, laws and regulations of state human services agencies) as evidence of qualification to practice ABA independently, without supervision. Currently under the Nebraska Medicaid waiver program a LIMHP, licensed psychologist, or licensed APRN must provide supervision to individuals who provide behavior analytic services. That is problematic because few of those supervising individuals have the training required to deliver or oversee behavior analytic services. Their "supervision" consists mainly of signing documents indicating that behavioral assessments have been completed.

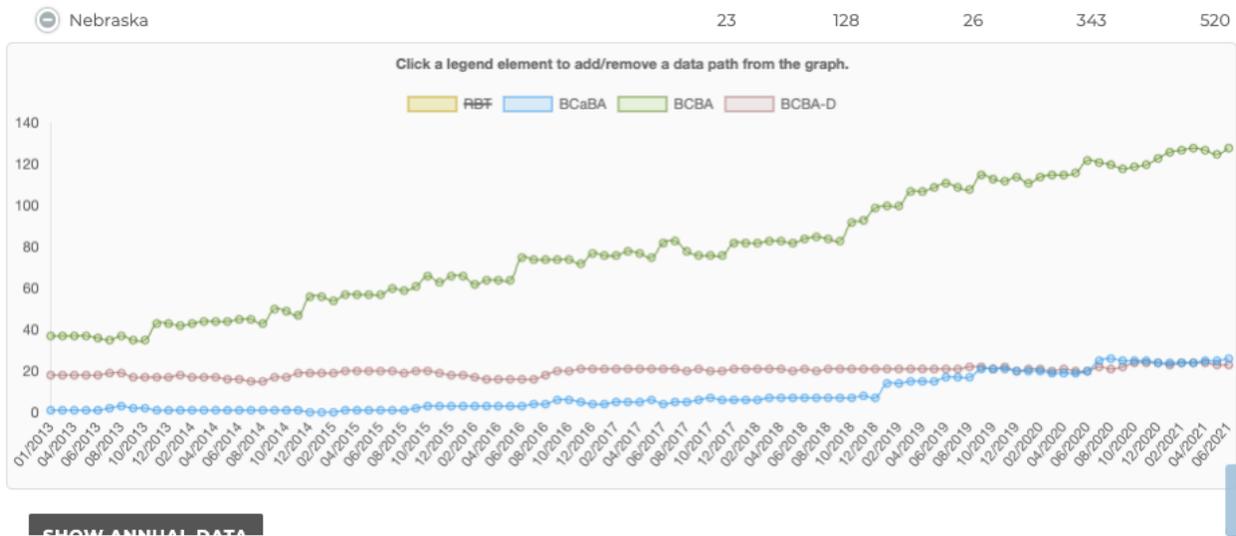
Professional behavior analysts who provide supervision do so in accordance with the supervision standards currently set forth by the BACB (<https://www.bacb.com/supervision-and-training/>). Supervision entails training those individuals to implement protocols correctly and safely, observing that implementation directly and frequently, and providing corrective feedback and additional training as needed to ensure client progress (https://www.bacb.com/wp-content/uploads/2020/05/BACB-Compliance-Code-english_190318.pdf.)

9. What actions, judgments, and procedures of this occupation can typically be carried out without supervision or orders? To what extent is this occupation, or portions of its practice, autonomous?

Per the answer to the preceding question, appropriately licensed or certified behavior analysts with advanced degrees can engage in the activities in the profession's scope of practice as defined in state licensure laws (where applicable) or the current BACB Task List (<https://www.bacb.com/task-lists/>) without supervision, provided that the activities are within the individual's scope of training and competence as required by the profession's code of ethics. Some funders, such as health plans, may require a prescription or order from a diagnosing professional before an individual can receive ABA services.

10. Approximately how many people are performing the functions of this occupation in Nebraska, or are presenting themselves as members of this occupation? To what extent are these people credentialed in Nebraska?

At this writing, in Nebraska there are 138 Board Certified Behavior Analysts (BCBAs), 23 Board Certified Behavior Analysts-Doctoral (BCBA-Ds). It is not known how many non-credentialed individuals are purporting to practice ABA or are representing themselves as behavior analysts.



11. Describe the general level of education a training possessed by practitioners of this occupation, including any supervised internship or fieldwork required for credentialing. Typically, how is this education and training acquired?

The current requirements are set forth by the BACB. Any future certifying entity with an equivalent or similar requirements may be considered in the future. The proposed Nebraska Licensing Board for Behavior Analysts would determine if an entity outside the BACB meets education and quality standards or if other standards are deemed necessary by the Nebraska Licensing Board for Behavior Analysts. If it is deemed the standards are equivalent or similar, those individuals would be considered for licensing in this jurisdiction.

Current eligibility requirements for taking the BCBA certification exam are outlined in the BACB's Board Certified Behavior Analyst Handbook, https://www.bacb.com/wp-content/uploads/2020/11/BCBAHandbook_210513.pdf. They include a graduate degree in behavior analysis, education, or psychology from a qualified institution; a total of 270 semester hours of graduate-level coursework in specified content areas in behavior analysis, evidence of having taught specific behavior analytic course content at the graduate level, or evidence of having 10 years' full-time experience practicing as a credentialed behavior analyst; and completion of specified hours of supervised experiential training as shown in the link provided in this question.

12. Identify the work settings typical of this occupation (e.g., hospitals, private physicians' offices, clinics, etc.) and identify the predominant practice situations of practitioners, including typical employers for practitioners not self-employed (e.g., private physician, dentist, optometrist, etc.).

Behavior analysts work in a variety of settings. They include but are not limited to public and private schools, childcare facilities, hospitals, clinics, centers, offices, family homes, group homes and other residential facilities, day treatment programs, vocational programs, nursing homes and other eldercare facilities, detention and rehabilitation facilities, businesses of various kinds, and universities.

Employers include but are not limited to public and private education systems, universities, state governmental agencies (e.g., Division of Developmental Disabilities, Children and Family Services), physicians, hospitals, healthcare agencies and systems, and companies or agencies that operate residential, day treatment, vocational training, and rehabilitation programs. Behavior analysts may also be self-employed in private practices.

13. Do practitioners routinely serve members of the general population? Are services frequently restricted to certain segments of the population (e.g., senior citizens, pregnant women, etc.)? If so, please specify the type of population served.

Services often are provided, but not limited to individuals with autism and other developmental disabilities, intellectual disabilities, learning and communication difficulties, attention deficit hyperactivity disorder, brain injuries, physical disabilities, behavior disorders, substance use disorders, feeding disorders, movement disorders, health problems, and difficulties associated with aging, as well as typically developing individuals (e.g., students, workers, athletes, caregivers) of all ages.

Autism and Developmental Disabilities:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Treatment-of-Autism-and-Other-Developmental-Disabilities-Fact-Sheet_210108.pdf

Sports:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Sport-Psychology-Fact-Sheet_210125.pdf

Clinical Behavior Analysis:

https://www.bacb.com/wp-content/uploads/2020/05/Clinical-Behavior-Analysis-Fact-Sheet_190520.pdf

Organizational Behavior Management:

https://www.bacb.com/wp-content/uploads/2020/05/Organizational-Behavior-Management-Fact-Sheet_190609.pdf

Behavioral Gerontology:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Gerontology-Fact-Sheet_190520.pdf

Brain Injury Rehabilitation:

https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Brain-Injury-Rehabilitation-Fact-Sheet_190520.pdf

Education:

https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Education-Fact-Sheet_210108.pdf

Sustainability:

https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Environmental-Sustainability-Fact-Sheet_210108.pdf

Behavioral Pediatrics:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Pediatrics-Fact-Sheet_190520.pdf

Prevention/Intervention of Child Maltreatment:

https://www.bacb.com/wp-content/uploads/2020/05/Prevention-and-Behavioral-Intervention-of-Child-Maltreatment-Fact-Sheet_210108.pdf

Health and Fitness:

https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Health-and-Fitness-Fact-Sheet_210104.pdf

Treatment of Substance Abuse Disorders:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Treatment-of-Substance-Use-Disorders-Fact-Sheet_210108.pdf

14. Identify the typical reasons a person would have for using the services of a practitioner. Are there specific illnesses, conditions or situations that would be likely to require the services of a practitioner? If so, please specify

Please see the answer to question 13 for typical clients of ABA practitioners. Specific illnesses and conditions include but are not limited to dementia, chronic pain, depression, mental illnesses, feeding disorders, behavior problems with significant medical dimensions (e.g., encopresis), medical problems with significant behavioral dimensions (e.g., diabetes, smoking cessation, weight management), noncompliance with medical regimens, autism spectrum disorder, intellectual and developmental disabilities, substance use disorders, behavioral disorders, communication deficits, brain injury rehabilitation, neurocognitive disorders, memory problems, anxiety, stress, relationship discord, disruptive behavior, impulsivity, inattention, movement disorders, and sleep disturbance.

The services of ABA practitioners may also be sought or prescribed in the following situations. The following is not an exhaustive list:

- To improve personal health and fitness. Behavior analysts work directly with individuals or in collaboration with healthcare professionals, registered dietitians, and personal trainers to help individuals adhere to dietary and physical activity regimens. Behavior analytic intervention procedures typically include task clarification, goal-setting, self-monitoring, accountability, feedback, self-talk regulation, stimulus control, behavioral skills training, and contingency management.
- To improve work environments. The subspecialty of Organizational Behavior Management (OBM) focuses on assessing and changing the work environment to improve employee performance and workplace culture. OBM consultants and managers work in a variety of industries (e.g., health care, human services, education, government, nonprofits, manufacturing, financial services, retail) to achieve meaningful and sustainable behavior change and improved business outcomes. OBM practitioners typically facilitate change initiatives, improve and develop processes and systems, close gaps in employee performance, retain and develop staff, and support business growth. Organizational results often include reduced accidents and injuries, improved employee retention, improved customer satisfaction and retention, cultural integration after mergers and acquisitions, improved quality standards, and increased revenue and profits.
- In sports and athletic training. Behavior analytic concepts, principles, and techniques can be used to enhance the performance and satisfaction of athletes, teams, and coaches. Common goals include teaching new skills; decreasing persistent errors; decreasing problem behaviors; maximizing competition performance; addressing motivation, thinking, emotions, confidence, and concentration related to athletic performance; teaching coaching techniques; and promoting adherence to a healthy diet and regular exercise regime. Common

interventions include goal-setting and self-monitoring, self-talk regulation, imagery rehearsal/visualization, video feedback, auditory feedback, behavioral skills training, contingency management, and the development of user-friendly manuals and computer tools.

- To improve education. Behavior analytic methods have been used to improve teaching and learning across many content areas, grade levels, and student populations for over 60 years. In that context, behavior analysis is a natural scientific approach to designing, implementing, and evaluating instruction based on analyzing interactions between teacher and student behaviors. Behavior analytic strategies and tactics have been used to teach academic, social, vocational, and daily living skills to people with and without diagnosed disorders or conditions and to improve entire systems of schooling. Key features include high rates of relevant learner responses with contingent feedback and ongoing instructional decision-making based on direct and frequent measures of student performance. Behavior analytic instructional design informs curriculum development from pre-academic skills to high-level concept formation and problem solving.

See the linked Fact Sheets for other sub-specialty service providers using behavior analysis provided in question 13.

15. Identify typical referral patterns to and from members of this occupational group. What are the most common reasons for referral?

Some common sources of referrals to professional behavior analysts are physicians, psychologists, social workers, counselors, and other professionals who serve individuals with disorders and conditions like those listed in the answers to questions 13 and 14, which are the most common reasons for referrals. The diagnosing professional may refer a client to a behavior analyst or an ABA service agency or may make a referral in the form of or accompanied by a letter, order, or prescription stating that ABA services are medically or clinically necessary for the client if that is required to obtain authorizations for services from third-party payers. Other sources of referrals include other behavior analysts, employees of health plans, employees of state human service agencies, school personnel, and family members of prospective clients.

Behavior analysts may refer clients and their caregivers to other behavior analysts who specialize in specific areas of behavior analytic treatment. For example, if a client displays severe problem behavior, a behavior analyst who does not have adequate training and competence to treat the client effectively should refer them to a colleague who does have the necessary training and competence. If there is a possibility that a physical condition may be contributing to a problem behavior, the behavior analyst should refer the client to the appropriate medical professional(s). Behavior analysts often also refer to or consult with speech and language pathologists, occupational therapists, physical therapists, mental health counselors, social workers, psychiatrists, psychologists, physicians, and other professionals with specialized expertise.

16. Is a prescription or order from a practitioner of another health occupation necessary in order for services to be provided?

A prescription or order for ABA services from a diagnosing healthcare professional may be required by some third-party funders of healthcare services, for therapy addressing symptoms of autism spectrum disorder.

A prescription may not be required for individuals seeking services through private pay or a Medicaid waiver. A prescription is not typically required for ABA services outside of healthcare systems.

17. How is continuing competence of credentialed practitioners evaluated?

The proposed Licensing Board for Behavior Analysts would set the continuing education requirements no less than those currently required by the BACB. The Licensing Board for Behavior Analysts may require additional continuing education. See the link below for the current BACB continuing education requirements.

https://www.bacb.com/wp-content/uploads/2020/11/BCBAHandbook_210513.pdf

18. What requirements must the practitioner meet before his or her credentials may be renewed?

Please see the answer to question 17.

19. Identify other jurisdictions (states, territories, possessions, or the District of Columbia) wherein this occupation is currently regulated by the government, and the scopes of practice typical for this occupation in these jurisdictions.

At this writing, the following U.S. states have adopted laws to license professional behavior analysts: Alabama, Alaska, Arizona, Connecticut, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin. All of those laws have been adopted since 2009, reflecting the fact that the profession is relatively young.

The wording of the scope of practice definition varies somewhat across those 33 licensure laws, depending in part on the model licensure act that was published at the time the law was adopted. In most, however, the definition is identical or similar to the one that appears in the current application.

Additional Question an Applicant Group Must Answer about their Proposal**1a) What is the problem created by not regulating the health professional group under review, or by not changing the scope of practice of the professional group under review?**

Many people with autism and related disorders, intellectual disabilities, traumatic brain injuries, and other conditions exhibit behaviors that directly jeopardize their health and safety, such as self-injury, elopement, pica (ingesting inedible items), feeding problems, and aggression. Such behaviors often result in costly and largely ineffective use of psychotropic medications, emergency room services, psychiatric hospitalizations, and residential services as well as tremendous emotional and financial burdens for families (e.g., Mandell, 2007; Montes & Halterman, 2008; Tsakanikos, Costello, Holt, Sturmey, & Bouras, 2006). Substantial research shows that competently designed and delivered ABA interventions are effective for reducing problem behaviors (e.g., Campbell, 2003; Hagopian, Rooker, & Rolider, 2011; Hassiotis, Canagasabe, Robotham, Martston, & Romeo, 2010; Heyvaert, Maes, Van den Noortgate, Kuppens, & Onghena, 2012; Lang et al., 2009; Ontario Association for Behaviour Analysis, 2019). Conversely, research has shown that interventionists who lack sufficient training in ABA can actually *increase* the occurrence of such behaviors in people with autism and other disorders (e.g., Lovaas, Freitag, Gold, & Kassorla, 1965; Lovaas & Simmons, 1969; Mason & Iwata, 1990; also see Hanley, Iwata, & McCord, 2003).

Abundant research also shows that early, intensive ABA treatment can produce moderate to large improvements in the overall functioning of many young children with autism when that treatment is designed and supervised by qualified professional behavior analysts (e.g., see Eldevik et al., 2009, 2010; Green, 2011; Klintwall, Eldevik, & Eikeseth, 2015; Virues-Ortega, Rodriguez, & Yu, 2013). The resulting decreased need for specialized services yields large cost savings for the systems that are responsible for education, healthcare, and other services for people with autism (Chasson, Harris, & Neely, 2007; Jacobson, Mulick, & Green, 1998; Motiwala, Gupta, & Lilly, 2006). In contrast, studies have shown that early “behavioral” intervention overseen by individuals who made unsupported claims to be qualified as ABA “consultants” produced no improvements in young children with autism (Bibby et al., 2002; Mudford et al., 2001). Thus, the fees paid to those consultants as well as the very precious time of the children they served were lost.

One illustration of harms resulting from the absence of state regulation of practitioners of behavior analysis can be seen in a situation involving an individual in Connecticut who misrepresented herself as a Board Certified Behavior Analyst several years ago. That individual was employed by 5 public school districts to oversee “ABA” interventions for students with autism. The schools did not check her credentials, and over the course of about 3 years paid her nearly \$500,000 in taxpayer-funded fees. Some parents began to question the interventions the individual developed for their children, until eventually it came to light that she had fabricated her BCBA certification and degrees, and she was convicted of fraud. As a result of that case the state of Connecticut

adopted a law requiring public schools to have bona fide BCBA design and oversee ABA interventions that were in the individualized education plans (IEPs) for students with autism. Subsequently the state also adopted a law to license behavior analysts. Legal cases involving individuals who misrepresented their qualifications in the practice of behavior analysis have arisen in several other states as well.

In summary, many behavior analytic interventions are highly effective and safe when designed, delivered, and overseen by qualified professional behavior analysts, but ABA methods can easily be misused and abused by those who lack the necessary training and competencies. As described previously, the Behavior Analyst Certification Board (BACB) has conducted job analysis studies and followed other well-established procedures and standards to identify the competencies needed to practice ABA, specified the didactic and experiential training required to attain those competencies, developed and validated professional examinations in the subject matter, established continuing education requirements, and developed professional and ethical standards. At present there is no entity in Nebraska that is authorized by law to regulate practitioners of behavior analysis, and thus no local, legally authorized mechanism to protect consumers, employers, and state agencies from individuals who make false claims to the necessary competence, or whose practice is not consistent with the profession's ethical and disciplinary standards.

Additionally, qualifications for providing and overseeing ABA services differ from one funding source to another within our state. That makes it impossible to evaluate, much less assure, the quality of services that are characterized as "ABA." Without a law specifying that all individuals who practice ABA professionally must meet well-established training standards, pass a professional examination in the practice of ABA, and adhere to the profession's code of ethics, our most vulnerable citizens are at significant risk of harm. Establishing licensure of behavior analysts with BACB certification as the primary qualification will fill that void and protect the public.

2a) If the proposal is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed below, and the impact of such methods on the public, must be considered. For each of the following evaluate the feasibility of applying it to the profession and the extent to which the regulatory method would protect the public.

- Inspection Requirements:
Not feasible. There is currently no state entity that is authorized to inspect behavior analytic service providers or agencies. Inspections of facilities would not involve oversight of what is actually done by someone providing behavior analytic services.
- Injunctive Relief:
Currently, a person claiming to hold a credential they do not hold could be ordered to cease claiming to hold the credential. Although the person could be ordered to cease claiming to hold the credential, there would be nothing to stop or prevent the person from continuing to claim to provide behavior analytic services.
- Regulating the business enterprise rather than individual providers
There is currently no state entity that regulates business entities that provide – or purport to provide -- ABA services. Even if there were, it would not serve the same functions as a law to license individual practitioners for whom, unlike businesses, there are professional standards regarding education, experiential training, examination, continuing education, and ethics.
- Regulating or modifying the regulation of those who supervise the providers under review
There is currently no state regulation of those who supervise the delivery of behavior analytic services.
- Registering the providers under review
Registration in the U.S. is typically a process whereby a nongovernmental entity, such as a professional association, maintains a “registry” or list of individuals who are said to be qualified to practice a profession. They may simply attest to being qualified or may be required to submit certain evidence to the association. Registration is usually voluntary, and the professional association usually has little or no legal authority to impose rigorous requirements, enforce ethical and disciplinary standards, and the like. Registration of behavior analysts therefore would provide little real protection to consumers, employers, funders, and the state. This falls short of providing legally enforceable protection to the constituents of Nebraska.
- Certifying the providers under review by the State of Nebraska
As indicated previously, at present providers may be certified by the Behavior Analyst Certification Board, but that independent credentialing body has no legal

authority to require everyone who purports to practice ABA to be certified or to enforce its ethical and other standards with non-certified individuals. Therefore, certification alone will not protect the public adequately.

- Licensing the providers under review

This is both feasible and necessary to protect the public. As outlined in this proposal, a sound model for licensing behavior analysts exists and is being implemented in many jurisdictions. It makes current certification by the Behavior Analyst Certification Board (BACB) the main qualification for state licensure, thereby ensuring that every applicant for licensure will have had their degrees, coursework, and supervised experiential training verified and will have passed the only psychometrically and legally validated professional examination in the practice of ABA. That will ensure that license holders meet standards for practicing ABA that have been set by the profession, and that parallel requirements for licensure in most other professions. It will also save the state licensing entity a great deal of labor and money and make operation of the licensure program very cost-effective.

3a) What is the benefit to the public of regulating the health professional group under review or changing the scope of practice of the regulated health profession under review?

As noted earlier, independent practice of ABA requires a high level of specialized formal and experiential training, as reflected in the BACB certification standards. Behavior analysts often work with individuals who engage in severe problem behavior such as aggression, property destruction, and self-injury. Those very vulnerable populations have very different needs than clients that are typically served by other mental health professionals. To treat such behaviors effectively, a behavior analyst must conduct specialized assessments, implement treatments tailored to those assessment results, train appropriate individuals to carry out those treatments, monitor and oversee the individual's progress, and develop procedures that will last over time and generalize to non-treatment settings. By enacting the legislation proposed here, the legislature will ensure that Nebraska constituents have an objective means of identifying providers who have met standards identified by an approved credentialing body and that they receive services from practitioners who have met requirements comparable to those that apply to most other healthcare and human service professions. It will also ensure that, like most other professions, the practice of behavior analysis is regulated by an elected board with full authority to enforce the licensure law and regulations. That includes authority to investigate alleged violations of ethical standards, and to impose sanctions on those who are found guilty, up to and including revocation of licenses. This would protect constituents from individuals who have lost their license in other states who move to Nebraska to continue providing services due to the current lack of local legislation overseeing the profession.

4a) What is the extent to which the proposed regulation or the proposed change in scope of practice might harm the public?

We anticipate that adoption of the proposed licensure law will ultimately protect the public by ensuring that providers meet quality standards and provide quality services for consumers.

It is likely that the proposed regulation may restrict some individuals who purport to be practicing ABA because it will require current certification and a state-issued license to practice legally in the state. It is important to note, however, that the proposed standards are not more restrictive than necessary to ensure the safe and effective practice of ABA. Rather, the standards reflect the minimum requirements the profession deems necessary. They are similar to the licensure requirements of other professions in Nebraska, and for licensure in behavior analysis in 33 states. Additionally, the BACB certification programs have been in place for more than 20 years. During that time the number of BACB certificants has increased substantially, suggesting that the certification standards have not restricted entry into the profession. To illustrate, in January 2013 there were 55 individuals with a BCBA or BCBA-D credential in Nebraska. At this writing there are 161 -- a 193% increase in the last 8 years. A recent analysis commissioned by the BACB found that there were 187 job postings for BCBAs or BCBA-Ds in Nebraska in 2020, and that the demand for BCBA and BCBA-Ds in the U.S. increased by 4,209% in the last 11 years, with increases occurring each year since 2010 (https://www.bacb.com/wp-content/uploads/2021/01/BurningGlass2021_210126.pdf).

The demand for ABA services in this state and elsewhere creates the potential for individuals to capitalize on the vulnerability of constituents seeking behavior analytic services by fraudulently representing that they are qualified to provide them. Without a behavior analyst licensure law, consumers who are harmed by such individuals have no entity within the state with which they can file a complaint.

5a) What standards exist or are proposed to ensure that a practitioner of the health professional group under review would maintain competency?

We propose to incorporate the continuing education requirements outlined in the answer to question 17 in the licensure law or rules.

6a) What is the current and proposed role and availability of third-party reimbursement for the services provided by the health professional group under review?

Currently ABA services are designated medically necessary for individuals with autism spectrum disorder and reimbursed by many commercial health plans in the state per LB254, which went into effect in 2014. Medicaid also covers ABA services.

Some services provided by behavior analysts may fall outside the realm of autism services that are covered through third-party insurance providers (e.g., smoking. In these cases, insurance companies may potentially reimburse for services that are provided by an untrained and unqualified individual. Furthermore, the services provided by these individuals may not be effective, or worse, harmful to the consumers.

7a) What is the experience of other jurisdictions in regulating the practitioners affected by the proposal? Identify appropriate statistics on complaints, describing actions taken, etc., by jurisdictions where the profession is regulated.

State Complaints and Disciplinary actions

Missouri: Began licensing behavior analysts in 2010. As of 2020 the Missouri licensing entity had licensed 113 behavior analysts and investigated 13 complaints against licensees. (<https://pr.mo.gov/ba.asp>)

Missouri was included due to the state having licensure for over a decade and giving a relative comparison to another Midwest state.

8a) What are the expected costs of regulating the health professional group under review, including the impact of registration, certification, or licensure on the costs of services to the public? What are the expected costs to the state and to the general public of implementing the proposed legislation?

Because the cost of administering the proposed licensure program is low, it is not anticipated that adoption of the licensure law will have a measurable impact on the costs of behavior analytic services to the public. The Nebraska Behavior Analyst Licensing Board will not be as costly to operate as many other licensing boards because BACB certification will be the primary qualification for licensure. The licensing of this profession will be revenue-neutral, self-sustaining, and self-funding.

The BACB (or other approved credentialing boards) will have vetted applicants for licensure to see that they meet the degree, coursework, and supervised experience requirements set by the profession, and will verify that the applicant has passed the professional examination in behavior analysis, so the state board will not have to incur any of those costs. Additionally, the BACB (or other approved credentialing board) has established procedures for coordinating with state licensing entities to vet applicants and on disciplinary matters. Therefore, the Nebraska Behavior Analyst Licensing Board will be able to operate in a cost-effective manner without charging prohibitive licensure fees.

Kentucky is a state that has had licensure for behavior analysts for over 10 years. Beginning in 2011, 20 licenses were issued. In 2020, nearly 400 licenses were active in that jurisdiction. Each fiscal year since the onset of licensure, the cost in revenue has been greater than the cost of expenses, resulting in cash carried forward into the next fiscal year. It is anticipated that the operating costs in Nebraska would be similar, indicating that a stand-alone licensing board for behavior analysts would be cost-effective to the state.

9a) Is there any additional information that would be useful to the technical committee members in their review of the proposal?

To expand on information provided in the answer to question 4a, from 1999 to 2014 the number of BACB certificants went from 0 to more than 16,000 in the U.S. (Deochand & Fuqua, 2019). Over that same time period the numbers in Nebraska increased from 0 to 75 . Starting in 2007, laws requiring certain commercial health plans to cover ABA and other services for individuals diagnosed with an autism spectrum disorder began to be adopted in many states, including Nebraska in 2014. Such laws or state orders with similar requirements are now in place in all 50 states, which has spurred large increases in the demand for ABA services from qualified professionals. At this writing there are more than 43,000 BCBAs and BCBA-Ds and more than 4,000 BCaBAs in the U.S. As noted previously, the demand for ABA services in Nebraska is expected to continue to increase, raising concerns that individuals who do not have the necessary training will attempt to bill third-party and private payers for “ABA” services. That is a direct threat to the health, safety, and wellbeing of Nebraska consumers who seek quality behavior analytic services.